



April 26, 1999

Mr. Edgar Coble, Jr.  
Attorney and Counselor at Law  
2200 Forest Park Boulevard  
Fort Worth, Texas 76110

OR99-1117

Dear Mr. Coble:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123722.

The Grand Prairie Independent School District (the “district”), which you represent, received a request for the following information: documents relating to the salary of a specific employee; a copy of the tape that recorded a specific open session of the school board; and a copy of the tape which recorded a certain grievance. You state that since the grievance hearing was conducted in executive session, the district believes that the recording must be withheld from disclosure under section 551.104(c) of the Government Code.<sup>1</sup> Section 551.103 of the Government Code provides in pertinent part:

(a) A governmental body shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

....

(d) A tape recording made under Subsection (a) must include announcements by the presiding officer *at the beginning and the end of the meeting indicating the date and time.* [Emphasis added.]

Section 551.104 of the Government Code addresses the preservation and the conditions under which the certified agenda or tape recording of an executive session may be released to the public. Section 551.104 provides in pertinent part:

---

<sup>1</sup>Since you do not seek a ruling on the other requested items, we presume that this information has been released to the requestor. See Gov’t Code § 552.301.

(a) A governmental body shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. . . .

(b) In litigation in a district court involving an alleged violation of this chapter, the court:

. . . .

(3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.

(c) *The certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).* [Emphasis added.]

Finally, section 551.146 provides for both civil and criminal penalties for the unlawful release of the certified agenda or tape of a closed meeting.

You inform us that the Grand Prairie School Board (the “board”) normally maintains a certified agenda of an executive session. However, in this instance, the board only tape recorded that portion of the executive session pertaining to the employee’s grievance. We must assume, therefore, that the tape recording did not comply with the procedural requirements of section 551.103(d) and that the tape was not created for purposes of the Texas Open Meetings Act.<sup>2</sup> Based on these assumptions, we conclude that the requested information is not a “tape recording of a closed meeting” for purposes of either section 551.103, 551.104, or 551.146 of the Government Code.<sup>3</sup> Consequently, the release of the tape recording at issue would not constitute a violation of the Open Meetings Act.

Based on the foregoing, and the fact that you have raised no exception to disclosure under the Public Information Act, we conclude that the district must release the requested tape

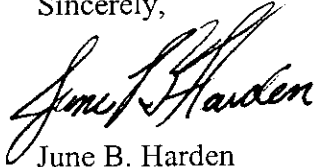
---

<sup>2</sup>You did not submit a copy of the tape recording to this office, presumably in accordance with Open Records Decision No. 495 (1988), which concluded that the attorney general lacks authority to review certified agendas or tapes of executive sessions when making open records decisions. Consequently, we are unaware of the contents of the requested tape recording.

<sup>3</sup>Given our conclusion here, we need not address at this time whether a governmental body that creates both a certified agenda and a tape recording of a closed meeting under section 551.103 must maintain both records in accordance with section 551.104.

recording to the requestor.<sup>4</sup> We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 123722

cc: Ms. Ann H. Pogue  
Grand Prairie Federation of Teachers  
439 W. Pioneer  
Grand Prairie, Texas 75053-0626

---

<sup>4</sup>Because you did not submit to this office a copy of the requested tape recording, we are unaware of any information in the recording that would implicate the privacy interests of the employee. However, in this instance we need not consider such privacy issues because the requestor, the employee's representative, has a special right of access to any such information. See Gov't Code § 552.023.